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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ANTONIO MEDINA

Plaintiff,

V.

MICROSOFT CORPORATION, et al,

Defendants.

Case No. 3:14-cv-00143-RS

**DEFENDANT MICROSOFT'S
OPPOSITION TO PLAINTIFF'S MOTION
TO STRIKE AND SEAL**

Judge: Hon. Richard Seeborg

Hearing: December 17, 2020

Time: 1:30 p.m.

1 **I. ARGUMENT**

2 This case has been closed since January 2015. In his Motion to Strike and Seal, pro se
 3 Plaintiff, Antonio Medina, now asks the Court to strike portions of Microsoft's Motion for Entry of
 4 Protective Order as well as Magistrate Corley's Order granting that Motion, which date back to the
 5 summer of 2014. In the alternative, Plaintiff appears to suggest that the Court should seal that
 6 material.

7 While the motion fails to establish that Plaintiff is entitled to any relief, Microsoft does not
 8 oppose Plaintiff's request to seal the material solely in order to most efficiently dispose of this issue
 9 in a case which is now long closed. Microsoft does, however, object to striking all or any portion of
 10 the pleadings. Microsoft also wishes to correct a number of inaccuracies in Plaintiff's most recent
 11 filing.

12 Plaintiff's request to strike should be denied because it fails to meet the standard for striking
 13 materials from a pleading. Motions to strike are disfavored and should not be granted unless the
 14 stricken matter "could have no possible bearing on the subject matter of the litigation." *F.D.I.C. v.*
 15 *Straub*, No. 11-03295, 2012 WL 1965621, at *2 (N.D. Cal. May 31, 2012) (emphasis added) ("A
 16 court must deny the motion to strike if there is any doubt whether the allegations in the pleadings
 17 might be relevant in the action"). As discussed in more detail below, Plaintiff's prior convictions for
 18 fraud were relevant to whether he could be trusted to comply with the strictures of the protective
 19 order in that case. Further, the purpose behind such a motion is to streamline the case "by dispensing
 20 with [spurious] issues prior to trial[.]" *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973 (9th
 21 Cir. 2010); *Sidney-Vinstein v. A.H. Robins Co.*, 697 F.2d 880, 885–86 (9th Cir. 1983). Thus,
 22 Plaintiff's motion should be denied because it was filed years after the settlement of all the issues in
 23 this case. *Rosenshein v. Kushner*, No. 15cv7397, 2016 WL 4508756, at *7 (S.D.N.Y. Aug. 26, 2016),
 24 *aff'd sub nom. Rosenshein v. Meshel*, 688 F. App'x 60 (2d Cir. 2017) (holding Rule 12(f) did not
 25 require striking of allegations where claims were already dismissed).

26 Moreover, Courts have declined to strike allegations that cast a party in an unfavorable light
 27 where those allegations are already part of the public record. *Rosenshein*, 2016 WL 4508756, at *7
 28 ("while the allegations paint Sturman in a negative light, some are already part of the public record

1 in a prior proceeding and none is sufficiently scandalous to require striking under Rule 12(f)"); *Doe*
 2 v. *Murray*, No. A-08-CA-234, 2008 WL 11333998, at *2 (W.D. Tex. Sept. 26, 2008) ("Defendants
 3 do not make a strong showing of prejudice, as the matters at issue are part of the public record.").

4 Plaintiff asserts that Microsoft's (and the Court's) recitation of his criminal history was "false,
 5 defamatory and also irrelevant," (Motion at 3). This is not accurate as his criminal history and prior
 6 convictions were well established and a matter of public record at the time of Microsoft's Motion for
 7 Protective Order. *United States v. Puerta*, 38 F.3d 34, 36 (1st Cir. 1994) (affirming Plaintiff's
 8 conviction of "bank fraud" and "transportation in foreign commerce of stolen or fraudulently obtained
 9 funds" where "Medina had deposited a \$365 check in his Bank of Boston account, knowingly
 10 misrepresented the amount as \$365,000, ultimately received a credit of \$365,000 to his account, and
 11 then transferred \$350,000 of these fraudulently obtained funds to his account in an English bank.");
 12 Jury Verdict, *United States v. Puerta*, No. 11-cr-00055 (C.D. Cal. Sept. 12, 2012), ECF No. 79 (Jury
 13 verdict as to Antonio Medina Puerta, Guilty on Count 1-3). In fact, at the time, Plaintiff did not
 14 dispute the convictions in his response to Microsoft's Motion for Protective Order, only stating that
 15 they were irrelevant. Opposition to Microsoft's Motion for Entry of Protective Order, Dkt. No. 68 at
 16 6 ("Microsoft alleges that Dr. Medina has a criminal history because of two cases that it found. One
 17 is more than 20 years old, and the other is on appeal."). To date, Dr. Medina has not provided
 18 evidence to support his position, though his second conviction appears to have been reversed on
 19 appeal, subsequent to the motion in question. *United States v. Puerta*, 607 F. App'x 635, 635 (9th
 20 Cir. 2015) (recognizing "Medina Puerta was charged with and convicted of three counts of bank fraud
 21 under 18 U.S.C. § 1344(2)" before overturning conviction).

22 Plaintiff further contends that discussion of his criminal history was "gratuitous and bear[s]
 23 no connection to the issues decided" in this Court's decision to grant a protective order. Motion at
 24 2-3. But the papers and Magistrate Corley's Order show that the opposite is true. Microsoft believed
 25 Plaintiff's prior criminal convictions for crimes involving fraud demonstrated that he could not be
 26 trusted to maintain the confidentiality of Microsoft's documents produced in discovery. Motion for
 27 Protective Order, Dkt. No. 53 at 1 ("Medina's status as Microsoft's direct competitor in the area of
 28 the accused technology—and Medina's inherent lack of trustworthiness, as confirmed by his repeated

1 fraud convictions—makes it inappropriate for Medina to personally have access to any Microsoft
 2 confidential information.”). Magistrate Corley granted Microsoft’s motion. Order, Dkt. No. 77 at 5-
 3 6 (“The District’s Model Protective Order governs this action and Dr. Medina may not view any
 4 material Microsoft designates as ‘highly confidential.’”). Though her Order does not expressly state
 5 that Plaintiff’s criminal history influenced her decision, the fact that she included a discussion of his
 6 convictions in her Order suggests she too believed them relevant.

7 Finally, Plaintiff has misrepresented his attempt to meet and confer with Microsoft. He quoted
 8 correspondence with Microsoft’s counsel from three years ago, implying the discussion related to his
 9 current filing. Though the parties did have a recent exchange in advance of his current filing, he
 10 chose not to include that exchange in his papers. Declaration of Judith B. Jennison in Response to
 11 Motion to Strike and Seal, Exh A. The discussions that Plaintiff references from 2017 related to a
 12 threatened (but never filed) motion to seal, not the present motion to strike and seal. *Id.*, Exh. B. This
 13 further shows that he knew in at least 2017 that the pleadings were public because he reached out to
 14 Microsoft at that time to request a joint motion to seal, which he never filed.

15 II. CONCLUSION

16 Microsoft recognizes that pro se litigants are often afforded more leniency than represented
 17 parties in procedural matters like the one before the Court. Plaintiff’s latest filing falls far short of
 18 the requirements to strike six year old papers or Court’s orders. Nonetheless, in the interest of
 19 efficient resolution of this issue, should the Court be so inclined, Microsoft does not oppose Plaintiff’s
 20 request to seal portions of Microsoft’s Motion for Protective Order or the Court’s Order granting that
 21 motion.

1 DATED: November 20, 2020
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By: /s/ Judith B. Jennison

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11 *Attorneys for Defendant Microsoft Corporation*
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CERTIFICATE OF SERVICE

I certify that I will cause the foregoing document to be served on the following parties by the method indicated.

Antonio Medina PO Box 361361 Milpitas, CA 95035 714-248-5689 medina_nasa@hotmail.com	<input type="checkbox"/> Via ECF <input checked="" type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Overnight Delivery <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Email
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DATED this 20th day of November 2020.

/s/ Judith B. Jennison
Judith B. Jennison